

## FOR DISCUSSION PURPOSES ONLY

**FY 2008**

### **CSCs ASSOCIATED WITH NEW AND EXPANDED CONTRACTS**

**ISSUE:** Instructions concerning the negotiation of CSC associated with new or expanded programs, services, functions, or activities (PSFA) being awarded pursuant to the ISDEAA.

CSC language associated with new or expanded program assumptions must be clear regarding the availability or unavailability of new ISD (CSC) funding. If the IHS and Tribes cannot reach agreement on this matter, then CSCs associated with the new or expanded program request must be declined, along with the parties' disagreement over language concerning the [unavailability of] new ISD (CSC) funding.

The basic principles at the core of the IHS position include the following:

- The IHS does not have ISD funds available to fund ISD (CSCs) associated with new or expanded PSFAs.
- A congressional earmark has limited the amount of CSC funds available to fund CSCs associated with new or expanded PSFAs, and all existing CSC funds have already been obligated for existing contracts and compacts.
- The Tribe has informed IHS that despite these conditions, it still wishes to contract for the new or expanded PSFA by using IHS program funds and/or tribal resources to cover the CSC funding shortfall, and the Tribe and IHS have determined that in such an event the administration of the PSFA under such circumstances will meet the applicable standards of the ISDEAA.
- **CSC need associated with new or expanded program should be included in annual 106(c) Agency CSC Report.**

**Deleted:** not endanger the public health.

It is critically important that there be agreement on these principles before any award of new or expanded PSFAs is made. If the IHS and the T/TO cannot reach agreement on these principles, then the Area Office is expected to work with the Headquarters Office of Tribal Programs and its own regional attorney in issuing a declination for contract support costs associated with the new or expanded PSFA, and any language IHS has developed regarding CSC payment issues that the T/TO has not agreed to accept. The T/TO then has the option of operating the severed portion of the contract proposal and appealing the declination; operating the severed portion and not appealing the declination; or deferring to operate the severed portion until a later date.

It is also important to remember that this issue only affects those awards where a T/TO proposes to add new or expanded PSFAs. Any declination that might arise as a result of a failure to reach agreement on this issue only affects the new or expanded PSFAs, not the existing award or existing PSFAs. Area Offices and T/TOs have some latitude in developing alternative language as long as it addresses the principles identified above. The following sample contract language is provided to address the above principles:

"The Indian Health Service has informed the [T/TO] that a Congressional earmark has capped the total amount of contract support cost funds available in the Indian Health Service FY 20-- appropriation and that the IHS anticipates that no funds will be available to fund CSCs associated with new or expanded programs, services, functions, or activities (PSFAs) to be carried out in FY 20--. Although the IHS does not require the [T/TO] to do so, the [T/TO] has informed the Indian Health Service that it can carry out the new or expanded PSFAs in FY 20-- without ISD funds, because the [T/TO] will either exercise its discretion to rebudget funds provided by the Indian Health Service under Section 106(a)(1) of the ISDA to CSC purposes, or will supplement the foregoing Section 106(a)(1) funds with the other [T/TO] resources (or may undertake a combination of both approaches), but that, in either event, the resulting administration of the PSFA will meet the applicable standards of the ISDEAA.

**Deleted:** that are associated with the PSFAs

**Deleted:** not be so diminished so as to endanger the public health

By this Agreement, the Indian Health Service transfers the PSFAs described herein, based upon the parties' understanding that IHS is not providing any new CSC funds associated with the PSFAs. Nothing in this agreement creates a promise to pay CSCs associated with the PSFA independent of the availability of appropriations in FY 20--. IHS will calculate any additional CSC requirement, as defined by the IHS CSC Policy, associated with the PSFAs pursuant to the applicable IHS Contract Support Cost Policy (IHS Indian Health Manual, Part 6, Chapter 3, or its successor). Any additional CSC requirement shall be included in the FY 20--CSC report IHS prepares under 25 U.S.C. 450j-1(c).

Notwithstanding the foregoing, the [T/TO] will continue to be eligible to participate in any distribution of CSC shortfall funds that may be available in FY 20--, pursuant to the IHS Contract Support Cost Policy (IHM 6-3.3(B)(4)). Should Congress make additional CSC funds available to IHS through the FY 20-- appropriation process and earmarks funds for new and expanded contracts, IHS will distribute such funds pursuant to the Contract Support Cost Policy IHM 6-3. Should Congress make additional CSC funds available to IHS through the FY 20-- appropriation process but not earmark funds for new and expanded contracts, IHS will distribute those funds as shortfall funds according to its Contract Support Cost Policy (IHM 6-3). Any funds the [T/TO] receives as a result of such distribution shall be added by amendment to this Agreement. The parties shall construe this provision consistently with the ISDA."

**Deleted:** within the \_\_\_\_\_ Area

This or similar language would be used in addition to the standard CSC language that is used for ongoing CSC. For your information that standard language is:

“For purposes of this funding agreement, IHS will calculate and pay CSC in accordance with Section 106 of the ISDEAA; IHS Contract Support Cost policy at Indian Health Manual, Part 6, Chapter 3; and subject to any statutory requirements imposed by Congress.”

If you have any questions, please contact Mr. Ronald Demaray, Director, Self-Determination Services at (301) 443-1104.

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